

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**FILED
CLERK**

9/15/2020 2:51 pm

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MARGARET SHAKESPEARE, on behalf of
Herself and all other similarly situated,

**U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
LONG ISLAND OFFICE**

Plaintiff,

v.

Case No.: 18-cv-7299 (SJF)(AYS)
**ORDER ADOPTING
REPORT &
RECOMMENDATION**
(ECF No. 114)

LIVE WELL FINANCIAL, INC.,
COMPU-LINK CORP., d/b/a CELINK, and
REVERSE MORTGAGE FUNDING, LLC,

Defendants.

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FEUERSTEIN, Senior District Judge:

I. Introduction

Before the Court is a Report and Recommendation (hereafter, “Report”) of the Honorable Anne Y. Shields, United States Magistrate Judge, dated February 5, 2020: (1) recommending that the motion to dismiss this action made pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure by Defendant Compu-Link Corporation, d/b/a Celink (“Celink”) (*see* ECF No. 109; hereafter, the “Dismissal Motion”) be denied (*see* Report at 2); and, (2) advising, *inter alia*, (a) that “[a]ny written objections to th[e] Report . . . must be filed with the Clerk of the Court within fourteen (14) days of filing of th[e] Report”, and (b) that a “[f]ailure to file objections within fourteen (14) days will preclude further review of th[e] Report . . . either by the District Court or Court of Appeals.” (*Id.* at 5 (citing 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 6(a), 72(b); *Thomas v. Arn*, 474 U.S. 140, 145 (1985); *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008)).)

On February 5, 2020, a copy of the Report was served upon counsel for all represented parties¹ via ECF. (*See* Notice of Electronic Filing *associated with* ECF No. 114.) Defendant Live Well was served with a copy of the Report on June 3, 2020. (*See* Notice Order (ECF No. 131); *see also* ECF No. 132 (Certificate of Service).) Despite such service, no objections have been filed; nor did any party seek an extension to do so. (*See* Case Docket, *in universum*.) For the reasons set forth below, Magistrate Judge Shields' Report is adopted in its entirety.

II. Discussion

A. *Standard of Review*

Any party may serve and file written objections to a report and recommendation of a magistrate judge within fourteen (14) days after being served with a copy thereof. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(2). Any portion of such a report and recommendation to which a timely objection has been made is reviewed *de novo*. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3). However, the Court is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. *See Thomas*, 474 U.S. at 150. Indeed, “[w]here parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (quoting *Mario v. P & C Food Markets, Inc.*, 313 F.3d 758, 766 (2d Cir. 2002)).

To accept a magistrate judge’s report and recommendation absent a timely objection, the court need only be satisfied that there is no clear error on the face of the record. *See* FED. R. CIV. P. 72(b); *Baptichon v. Nevada State Bank*, 304 F. Supp.2d 451, 453 (E.D.N.Y. 2004), *aff’d*, 125 F. App’x 374 (2d Cir. 2005). Whether or not proper objections have been filed, the district judge

¹ Counsel for Defendant Live Well Financial, Inc. (“Live Well”) were relieved as counsel on May 13, 2019. (*See* Case Docket, AYS May 13, 2019 “ELECTRONIC ORDER”.) Thereafter, Live Well remained unrepresented. (*See* Report at 1 n.1; *see also* ECF No. 131 (“Notice Order”).)

may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b).

B. Review of the Report

No party has filed objections to the Report within the time prescribed in 28 U.S.C. § 636(b)(1)(C), nor has any party sought an extension of the deadline. As the parties were provided with adequate notice of the Report and an express warning of the consequences of failing to timely file objections thereto, their failure to interpose timely objections to the Report operates as a waiver of further judicial review. *See Caidor*, 517 F.3d at 602-03; *Mario*, 313 F.3d at 766. Thus, this Court is not obligated to conduct a *de novo* review of the findings and conclusions in the Report; rather, it “need only satisfy itself that there is no clear error on the face of the record to accept a magistrate judge’s report and recommendation.” *Safety-Kleen Sys., Inc. v. Silogram Lubricants Corp.*, No. 12-cv-4849, 2013 WL 6795963, at *1 (E.D.N.Y. Dec. 23, 2013).

After a careful review of the Report, the Court finds no plain error in either Magistrate Judge Shields’ reasoning or her conclusion that “Plaintiff has properly alleged standing at the pleading stage.” (Report at 4.) Hence, the Court adopts the Report in its entirety.

III. Conclusion

Accordingly, IT IS HEREBY ORDERED that Celink’s Rule 12(b)(1) Dismissal Motion is DENIED.

SO ORDERED this 15th day of September 2020 at Central Islip, New York.

/s/ Sandra J. Feuerstein

Sandra J. Feuerstein
United States District Judge